

Contingency Contracting Training



**Protests,
Claims,
Disputes,
and Appeals**

Agile Contracting Support...Anytime...

Current a/o 15 Dec

Anywhere



Overview

- Key Points
- Protests
- Contract Claims
- Contract Disputes and Appeals
- Contract Settlements and Alternative Dispute Resolution





Key Points

- Upon receipt of a protest, the contingency contracting officer (CCO) needs to act quickly and contact supporting legal counsel.
- To avoid distracting, time-consuming litigation, strive to resolve contract performance issues by mutual agreement with the contractor to avoid disputes and litigation.





Protests

- Receipt of Protest ... The first 24 hours
 - Upon receipt, immediately contact/forward a copy of the protest document to legal counsel
 - Discuss allegations with assigned attorney and potential impact to the mission if delay of award is triggered
- Responding to a Protest ... The first 30 days
 - Timely assessment of the protest allegations is key
 - Government must submit its agency report due to the GAO and the protester(s) within 30 days
 - Protests are typically document (CCO Statement of Relevant Facts) intensive and time consuming





Protests

- Responding to a Protest ... After 30 days
 - Protester has 10 days to file written response to the Government's agency report in the form of a legal brief
 - GAO will issue its decision by day 100
- Protest before Award (FAR 33.104(b))
 - Contract normally cannot be awarded with authorization from the Head of the Contracting Activity (HCA)
- Protest after Award (FAR 33.104(c)(1))
 - Contract normally will suspended performance or terminate the awarded contract
 - HCA may authorize continuance of contract performance





Contract Claims

- Contingency contracting produces an environment ripe for contractor claims – there's little to prevent it
 - Not every contractor request for relief is a “claim”
 - Strive to resolve issues by mutual agreement
 - Contact legal counsel for assistance and advice
 - Responding to contractor's claim can be time consuming
- Ace in the Hole: A CCO Final Decision (FAR 33.211)
 - Must be issued within 60 days after receipt of claim
 - Pursuant to the Disputes clause within the contract
 - May still result in a dispute by the contractor





Contract Disputes and Appeals

- Contract disputes involve issues developing over time
 - In a contingency environment the challenge to assemble a sound contract record presents unique hurdles
 - Time honored practices to mitigate these challenges are:
 - Digital Camera – A picture is worth a thousand words
 - Personnel Turnover – Work with J-1 to ensure key witnesses, past and present, can be easily located
 - Contract Files and Related Documentation – Availability of sound contract documentation is vital, without it a case is seriously weakened
 - Considering developing electronic files and charts
 - Use your reach-back legal counsel to assemble the underlying record (i.e., “Rule 4 File”) for contract appeals





Contract Settlements and Alternative Disputes Resolution

- If a dispute cannot be resolved, the CCO may consider negotiating a settlement or using a more formal ADR procedure with the contractor
 - In either event the CCO should seek the assistance and support of legal counsel
 - Legal counsel are there to assist in negotiating settlements or pursuing ADR measures
- Timely agreements by both parties are more valuable to maintain a continuing business relationship with the contractor during a contingency





Contract Settlements and Alternative Disputes Resolution

- Essential elements of an ADR include:
 - Existence of an issue in controversy
 - Both parties voluntarily participation in the ADR process
 - An agreement on alternative procedures and terms
 - Both parties have the desire and authority to settle
- If an ADR is used, a few tips to consider are:
 - Know your facts and stay focused on the objective
 - Develop an appreciation for the other side's view
 - Use simple, clear, and concise language
- An ADR can be applied for all or portion of a claim





Contract Settlements and Alternative Disputes Resolution

- Continued Performance
 - If necessary, CO shall use the Dispute Clause at FAR 52.233-1 with its Alternate I
- Reminders
 - Dispute Clause at FAR 52.233-1
 - Breach of Contract Claim at FAR 52.233-4





Summary

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- Contract Settlements and Alternative Dispute Resolution





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